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December 10, 1980

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Mr. William C. Gratz  
General Manager  
Worldwide Assurance for Employees  
of Public Agencies, Inc.  
7651 Leesburg Pike  
Falls Church, Virginia 22043

In re: WAEPA Group Life Insurance Plan

Dear Bill:

Enclosed are copies of our original request of April 25, 1978 to the Labor Department for an opinion on the coverage of the WAEPA Group Life Insurance Plan under ERISA and the Labor Department's response dated November 3, 1980. The substantive portion of the Labor Department's response to our request is contained in the last four paragraphs of page 2 of the Department's letter.

The Labor Department states that it has no view as to whether the program is an employee welfare benefit plan maintained by an employees' beneficiary association and therefore subject to ERISA. In reaching that position, the Labor Department states that a pre-requisite of an organization being an employees beneficiary association is that the members participate in and control the organization in a meaningful way. We are not aware of any published criteria that defines the terms "participation in", "control" and "in a meaningful way". The basis for this determination is interpretive bulletins issued under the Welfare and Pension Plans Disclosure Act, an act which was superceded by ERISA. These bulletins are still being used since there are no analogous regulations or bulletins issued under ERISA as yet. One of the requirements contained in the interpretive bulletins defining an employees' beneficiary association is that "employees participate" in the organization. That interpretive bulletin does not define participation as participation in and control of the organization's activities in a meaningful way.

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In a telephone conversation with a Staff member at the Labor Department, the Staff member stated that although this position has not been published in any prior advisory opinion letter, it was a position consistently maintained by the Labor Department.

Even though the Labor Department does not admit reliance on interpretations of the Internal Revenue Service (IRS), the Labor Department's position is analogous to a new position of the IRS contained in the proposed regulations of the IRS which were issued in July of 1980. This new position of the IRS is being contested by the private sector.

At this time you have four (4) options. They are as follows:

1. Argue that the Labor Department's position as to requiring members of WAEPA to participate in and control the organization in a meaningful way is an improper interpretation of the statute and therefore WAEPA's Plan should be covered by ERISA since it meets all of the other criteria for an employee welfare benefit plan maintained by an employees' beneficiary association.
2. Produce further information proving that the members of WAEPA do participate in and control the organization in a meaningful way and therefore WAEPA's Plan is covered under ERISA.
3. Request further information proving that the members of WAEPA do not participate in and control the organization in a meaningful way and therefore WAEPA's Plan is not covered under ERISA.
4. Do not proceed any further until final regulations are issued by the IRS under Section 501(c)(9) of the Internal Revenue Code either defining the concept of control of an organization or deleting that requirement or until the Labor Department issues further written explanation of its position. In the interim, it is our opinion that WAEPA could continue not filing ERISA required disclosure documents.

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At this point, we would suggest that no further action be taken, since (1) the Labor Department does not have a recently published position on the definition of control, and (2) an adverse ruling by the Labor Department may affect the ruling that you would subsequently seek when final regulations are issued under Section 501(c)(9) of the Internal Revenue Code.

If the Labor Department publishes any further rulings on this matter, we will contact you.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

SANDERS, SCHNABEL, JOSEPH & POWELL, P.C.

  
Dan S. Brandenburg

DSB/dw

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